

Edo Western and its workers' compensation insurance carrier, American Protection (referred to jointly as "Edo" hereafter) ask the Appeals Board of the Utah Labor Commission to reconsider its prior decision granting O. W.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this matter pursuant to Utah Code Ann. §63-46b-13.

ISSUES PRESENTED

Edo argues that the Appeals Board should refer the medical aspects of Mrs. W.'s claim to a medical panel. Edo also argues a new hearing should be held in this matter.

DISCUSSION

Both of the arguments raised in Edo's request for reconsideration have been previously considered and rejected by the Appeals Board.

With respect to Edo's request for appointment of a medical panel to consider the medical aspects of Mrs. W.'s claim, Commission rule provides that such panels will be used in cases where conflicting medical opinions demonstrate the existence of a significant medical issue. In Mrs. W.'s case, the Appeals Board views the various medical opinions as generally consistent. The Appeals Board finds no significant medical issue that would warrant appointment of a medical panel.

Edo's request for a new hearing is based on its assertion that it was unfairly surprised when Mrs. W. relied on a "cumulative trauma" theory of injury. However, the record establishes that Mrs. W. notified Edo of her cumulative trauma theory a month before the hearing. Furthermore, at the hearing itself, Edo neither objected to presentation of testimony on the cumulative trauma theory nor asked for a continuance to respond to that theory. Under these circumstances, the Appeals Board concludes that Edo has waived any objection it might otherwise have had to Mrs. W. proceeding on her cumulative trauma theory.

In summary, the Appeals Board finds no reason to modify its previous decision in this matter.

ORDER

The Appeals Board reaffirms its prior decision and denies Edo's request for reconsideration. It is so ordered.

Dated this 9th day of June, 2005.

Colleen Colton, Chair
Patricia S. Drawe
Joseph E. Hatch